Tong Tiong Lim v Pentadbir Tanah Daerah, Johor Bahru & Anor

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO J-01-24 OF 1994
ABU MANSOR JCA, ABDUL MALEK AND MOHD NOOR JJ
20 SEPTEMBER 1995

Civil Procedure *— Appeal — Leave to appeal — Appeal to Court of Appeal — Appeal against cancellation of order for a right of way — Appellant had agreed to pay the landowner compensation — Whether leave to appeal necessary — Whether court should exercise discretion to grant leave during the appeal — Courts of Judicature Act 1964 s 68*

The appellant appealed against the order made by the collector in cancelling a prior order of right of way. However, at the commencement of the hearing of the appeal, the respondents raised a preliminary objection that since the appellant had not obtained leave, the appeal could not proceed. Therefore, the only issue in the appeal was whether leave was necessary as it was common ground between the parties that the appellant had not obtained leave to appeal.

Held, dismissing the appeal:

The relevant provision in deciding whether leave to appeal is necessary is s 68 of the Courts of Judicature Act 1964. In this case, leave was indeed required before the appellant could proceed because the order was for an order for a right of way and the appellant had earlier agreed to pay the second respondent RM9,000 as compensation which was the value of the right of way. The court would not give leave there and then in exercise of its discretion as it was clear from the collector's record that the collector had cancelled the right of way ordered because the appellant had another access to his land and the right of way was not the only one he had to depend on.

[Bahasa Malaysia summary

Perayu merayu terhadap perintah yang dibuat oleh pentadbir membatalkan perintah terlebih awal yang memberikan hak lalu-lalang. Walau bagaimanapun, pada permulaan pembicaraan rayuan, pihak penentang membangkitkan bantahan permulaan bahawa oleh kerana perayu tidak mendapatkan kebenaran, rayuan ini tidak boleh diteruskan. Maka, isu tunggal dalam rayuan ini adalah sama ada kebenaran diperlukan kerana adalah diakui bersama bahawa perayu tidak terlebih dahulu mendapatkan kebenaran untuk merayu.

Diputuskan, menolak rayuan itu:

Peruntukan yang relevan untuk menentukan sama ada kebenaran untuk membuat rayuan diperlukan ialah s 68 Akta Mahkamah

Kehakiman 1964. Di dalam kes ini, kebenaran sememangnya diperlukan sebelum perayu boleh meneruskan rayuan kerana perintah yang dibuat adalah perintah untuk hak lalu-lalang dan perayu telah terlebih awal bersetuju untuk membayar kepada penentang kedua RM9,000 sebagai pampasan yang merupakan nilai hak lalu-lalang itu. Mahkamah tidak akan memberikan kebenaran pada masa itu juga dalam menggunakan budi bicaranya kerana adalah jelas dari rekod pentadbir bahawa pentadbir telah membatalkan hak lalu-lalang yang diberikan itu kerana perayu mempunyai laluan yang lain kepada tanahnya dan hak lalu-lalang itu bukanlah satu-satunya yang boleh digunakan oleh perayu.]

Notes

For cases on appeal, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 259–699.

Legislation referred to

Courts of Judicature Act 1964 s 68

Appeal from: Originating Motion No 25–29 of 1991 (High Court, Johor Bahru)

Badrol Hisham bin Mohamed Sani (*Shahinuddin & Ranjit*) for the appellant.

Abdul Alim Abdullah and *Abdul Rasid Sudin* (State Legal Advisers) for the first respondent.

Serene S Ong (*LM Ong & Co*) for the second respondent.

Cur Adv Vult

Abu Mansor JCA: It was common ground between the parties that the appellant did not obtain leave to appeal and so the only issue before us in this appeal was whether leave was necessary. This court's answer was that leave was necessary and since the appellant had not so obtained leave we unanimously struck out this appeal without going into the merits as it was not properly before us.

At the commencement of this appeal, the two respondents' counsel raised a preliminary objection that the appellant not having obtained leave to appeal could not proceed. The appellant's counsel contended that in this matter no leave was required and hence they did not do so. We heard arguments limiting ourselves to this issue.

The respondents' counsel referred us to the first order that was made by the collector which was in the appellant's counsel's letter of 12 January 1991 to the Pentadbir Tanah Daerah. It was as follows:

NCH/pk/GEN: 191/90
Bil (12) dlm (HL) 1/90

12 Januari 1991

Pentadbir Tanah Daerah,
Pejabat Tanah
Johor Bahru Dengan Tangan

Tuan

Per: Permohonan hak lalu-lalang persendirian atas lot 2775 — geran 27822 Bandar Johor Bahru

Merujuk kepada perkara di atas di mana kami mewakili En Tong Tiong Lim yang beralamat di 2-B, Jalan Stulang Darat, 80300 Johor Bahru.

Kami juga merujuk kepada perintah tuan bertarikh 29 Disember 1990 khususnya perenggan kelima di mana klien kami telah diarahkan membayar ganti rugi sejumlah RM9,000 kepada Pn Rathiah bte Othman, tuan tanah.

Bersama-sama ini kami kemukakan cek TOB, JB No 398073 untuk jumlah RM9,000 untuk dibayar kepada Pn Rathiah.

Kami juga ingin merujuk kepada perenggan kedua perintah tuan yang menyatakan bahawa lalu-lalang persendirian tersebut seharusnya selebar 10 kaki.

Kami telah dimaklumkan oleh klien kami bahawa setelah Pn Rathiah membina tembok di sepanjangan lalu-lalang tersebut, lebar lalu-lalang kini hanya selebar 7 atau 8 kaki sahaja.

Kami memohon kerjasama tuan untuk mengambil tindakan sewajarnya bagi memastikan Pn Rathiah mematuhi dengan sepenuhnya perintah-perintah yang dikeluarkan khususnya luas lalu-lalang yang telah ditetapkan.

Kami percaya bahawa ganti rugi yang telah dianggarkan harus setimbal dengan luas lalulalang yang ditetapkan.

Sekian kerjasama dan perhatian tuan didahului dengan ribuan terima-kasih.

Yang benar
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Lamp
sk 1 Pn. Rathiah bte Othman — mel biasa
2 klien — mel biasa

There was apparently an objection to the order made by the collector from the land owner, the second respondent. It was as follows:

Rathiah bte Othman,
No 3, Lorong Satu
Jalan Stulang Darat
Johor Bahru.

13 Januari 1991

Pentadbir Tanah Daerah
Johor Bahru
(U/P: Encik Mohd Naim bin Nasir)

Tuan

Bantahan ke atas permohonan hak lalu-lalang persendirian atas lot 2775 geran 27822 Bandar Johor Bahru (Ruj (HL) 1/90)

Merujuk kepada surat tuan bil (12) dlm (HL) 1/90 bertarikh 31 Disember 1990 adalah saya Rathiah bte Othman tidak bersetuju dan membantah atas perintah yang pihak tuan keluarkan kerana sebab-sebab berikut:

(i) lot 603 adalah satu keping tanah yang sememangnya ada muka jalan menghadap Jalan Stulang Darat. Ciri-ciri hak lalu-lalang bagaimana s 389 Kanun Tanah Negara 1965 adalah untuk mengujudkan hak lalu-lalang di atas tanah itu dan perhentian awam, maka dengan itu tiada sebab dan mengapa perlucutan hak perlu dibuat ke atas tanah saya lot 2775; dan

(ii) lot 603 adalah tanah pemilikan bersama oleh mereka-mereka dengan bahagian-bahagian yang berlainan sebagaimana ditetapkan dalam hakmiliknya. Sungguhpun tanah tersebut belum dipecah bahagian tanah itu di bawah Bab 2 Bahagian 9 Kanun Tanah Negara 1965 tetapi masing-masingnya berhak kepada milikan dan kenikmatan keseluruhannya bagaimana s 343(1)(b). Maka, dalam hal tersebut pemohon yang merupakan pemilik bersama di lot 603 boleh melalui tanahnya yang dimiliki bersama tersebut.

Berdasarkan dua sebab tersebut maka tiada hak untuk pentadbiran tuan untuk mengeluarkan perintah untuk hak lalu-lalang persendirian bagi pihak pemilik lot 603.

Sungguhpun sedemikian atas perikemanusiaan sebagaimana percakapan saya dalam perbicaraan dengan tuan, saya bersetuju untuk berunding dengan pemilik tanah untuk Ismen ke atas penggunaan di atas tanah saya.

Sekian untuk tindakan lanjut tuan, terima kasih.

Yang benar
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(Rathiah bte Othman)

sk: Leng & Co,
Peguambela dan Peguamcara
1st & 2nd Floor
Wisma Great Oriental
23, Jalan Meldrum
80000 Johor Bahru.

Encik Tong Tiong Lim
2-B, Jalan Stulang Darat.

As a result of that objection, the collector made another order as follows:

Permohonan hak lalu-lalang persendirian atas tanah lot 2775, geran 27822, Mukim Bandar, Johor Bahru.

Perintah

Berdasarkan faktor-faktor berikut dan menimbangkan siasatan yang telah diadakan pada 20 Februari 1991 kerana pemilik tanah lot 2775 mengemukakan bantahan, saya Mohd Azman bin Md Ali sebagai Penolong Pentadbir Tanah Daerah Johor Bahru, menarik balik dan membatalkan perintah yang dikeluarkan, bertarikh 29 Disember 1990.

1.1 Hak lalu-lalang tidak perlu diberikan oleh kerana tuan tanah-tuan tanah (pemohon) di lot 603 mempunyai lalu-lalang yang sendiri.

A 1.2 Ini adalah kerana mereka ini merupakan tuan tanah-tuan tanah bersama (lot 603).

1.3 Lot 603 ini masih belum lagi dibuat pecah bahagian.

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(Mohd Azman bin Md Ali)
B Penolong pentadbir tanah
Daerah Johor Bahru.

Diperbuat di Pejabat Pentadbir
Tanah Daerah Johor Bahru pada
20 Februari 1991.

C This second order of the collector annulled the first order made. Hence, this appeal went to the High Court Johor Bahru against the order of the collector. The High Court judge upheld and confirmed the decision of the collector.

Should the appellant have obtained leave? Section 68 of the Courts
D of Judicature Act 1964 reads:

Non-appealable matters

(1) No appeal shall be brought to the Court of Appeal in any of the following cases:

(a) when the amount or value of the subject-matter of the claim
E (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;

(b) where the judgment or order is made by consent of parties;

(c) where the judgment or order relates to costs only, which by law are left to the discretion of the Court, except with the leave of the Court of Appeal; and
F

(d) where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final.

(2) (Deleted).

(3) No appeal shall lie from a decision of a judge in chambers in a summary way on an interpleader summons, where the facts are not in dispute,
G except by leave of the Court of Appeal, but an appeal shall lie from a judgment given in court on the trial of an interpleader issue.

We were unanimous in upholding the contention of counsel for both respondents that leave was indeed required before the appellant could proceed because the order was an order for a right of way and clearly it was
H conceded by the appellant that he agreed to pay the second respondent landowner RM9,000 as compensation. That was indeed the value of the right of way.

The appellant's counsel prayed that we might give leave there and then in exercise of our discretion. We declined as we noticed from the
I collector's record that it was clear the collector had cancelled the right of way ordered because the appellant had another access to his land and the right of way was not the only one he had to depend on.

We struck out the appeal with costs with an order that the deposit is to go to the respondents to account of costs.

Abdul Malek J: Saya bersetuju sepenuhnya dengan isi kandungan penghakiman ini.

Mohd Noor J: Saya bersetuju sepenuhnya dengan isi kandungan penghakiman ini.

Appeal dismissed.

Reported by Azra Azman